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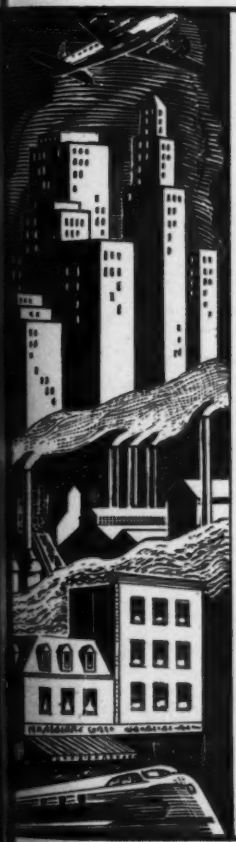

THREE KINDS OF "DOING BUSINESS"

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Article

Digests of Recent Opinions

The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers and accountants upon written request to any of the company's offices.

THREE KINDS OF DOING BUSINESS

AN extremely vexing decision confronting the corporate attorney is whether or not the activities of a corporation in a state other than the one in which it is incorporated require qualification. The difficulty in finding and applying the law, and the serious consequences which flow from the unauthorized doing of business in a state, combine to make this both a difficult and an important decision.

In spite of (and sometimes because of) the volume of decisions on the subject, misconceptions continue to flourish. It is not unheard of for a court to cite decisions involving the amenability of unlicensed foreign corporations to service of process as indirect authority for the determination of a qualification question. Furthermore, in a recent case the court relied, at least partially, on an opinion of the United States Supreme Court sustaining the imposition of a state net income tax on a foreign corporation in holding that the foreign corporation before the court was required to qualify. Examples abound of this confusion of one kind of "doing business" with another. A few general principles may help to clarify the situation and assist the corporate attorney in deciding whether the corporation must qualify.

The courts have considered three general types of "doing business." The question of whether or not a foreign corporation is subject to the jurisdiction of the state courts, whether it is subject to the state's taxing jurisdiction, and whether or not it has subjected itself to the regulatory or qualification statutes of the state, all turn, to a greater or lesser extent, on the activities of the corporation in the state. The greatest amount of business activity is required to subject a corporation to the qualification requirements. Where a corporation's activities in a state are sufficient to require qualification, it follows that the corporation will also be amenable to service of process in the state and to the taxing jurisdiction of the state.

The tests applied by the courts to decide these questions vary. In a very general way it can be stated that the question of service of process on an unlicensed foreign corporation turns on "traditional notions of fair play and substantial justice," and that jurisdiction of the state to tax an unlicensed foreign corporation engaged exclusively in interstate commerce depends on the corporation's "nexus" with the state. In its opinion in the leading case in the service of process field, *International Shoe Company v. State of Washington*, 326 U. S. 310, 66 S. Ct. 154, the United States Supreme Court enunciated its test for determining whether or not an unlicensed foreign corporation was subject to suit in a state. The language of the Court, quoted repeatedly in cases decided since that time, was to the effect that an unlicensed foreign corporation could be subjected to suit if to do so would not offend traditional notions of fair play and substantial justice. No longer would the question of service of process depend solely on the business activities of the corporation in a state. Rather, the practical considerations affecting the convenience of the parties, the location of witnesses and the relative expense of producing them at this or that forum, and the place of the injury, are given at least equal importance. Recognizing the economic fact of a society in which business is no longer primarily localized, in which the multistate corporation is becoming the rule, the courts have seen fit to require such businesses to answer the aggrieved party at the place most convenient to them both.

Since the United States Supreme Court's decision in *Northwestern States Portland Cement Co. v. Minnesota*, 358 U. S. 450, 79 S. Ct. 357, the answer

to the troublesome question of the jurisdiction of a state to tax corporations operating exclusively in interstate commerce seems to lie in the word "nexus." The Court in that case sustained the right of Minnesota to impose a properly apportioned nondiscriminatory net income tax on an unlicensed foreign corporation operating exclusively in interstate commerce, where the corporation had a sufficient nexus or connection with the state. Without a sufficient nexus between the state and the activities of the corporation therein, the imposition of even such a tax would violate the due process clause of the 14th Amendment. Since that decision some local activities in addition to strictly interstate commerce, such as the maintenance of an office or the solicitation of orders, have been relied upon by the courts as constituting the necessary nexus, Even this much local activity was held unnecessary, however, in a recent decision of the Supreme Court of Wisconsin, *Moore Motor Freight Lines, Inc. v. Wisconsin*, 111 N. W. 2d 148. In its opinion the Wisconsin Supreme Court held that the interstate hauling of goods, which was the business of the taxpayer, itself constituted a sufficient nexus with the state to sustain the tax.

It is difficult to say, in the light of these decisions, which requires less activity by a foreign corporation within the state to support the state's jurisdiction, service of process or taxation. It is clear, however, that neither requires as great a degree of activity as is needed to subject a foreign corporation to qualification requirements, and it is to this question, i.e., how to decide whether the corporation must qualify, that the rest of this article is directed.

The necessity of qualification and the commerce clause of the United States Constitution are inextricably intertwined. Qualification statutes, by their nature, are regulatory and cannot be imposed on corporations engaged exclusively in interstate commerce without denying such corporations the protection afforded interstate commerce by the commerce clause. The immunity of corporations engaged exclusively in interstate commerce from such regulatory statutes was restated by the United States Supreme Court as recently as May of 1961 in *Eli Lilly and Company v. Sav-On Drugs, Inc.*, 81 S. Ct. 1316.

The question, then, is whether the activities of the corporation are sufficient to constitute the doing of intrastate business so as to remove the corporation from the protection of the commerce clause. A great many decisions have been handed down weighing the significance, alone and cumulatively, of innumerable activities. Some activities have been universally held to constitute "doing business," such as maintaining a stock of goods in a state from which deliveries are regularly made to customers in that state. Other activities, standing alone, have been held to fall short of doing business, e.g., the mere solicitation of orders, or the maintenance of an office, in furtherance of the interstate activities of the corporation.

The often reiterated proposition, however, that each case must be considered and decided in the light of its distinctive factual situation is peculiarly applicable. Rarely does a case involve only one fact of significance to the determination of whether intrastate business is being done. It is the cumulative facts, the total of the corporation's activities, upon which the court's decision must be based. And although the effect of many activities has been adjudicated, the possible combinations are as numerous as the ingenuity of modern business permits.

The question of the necessity of qualification appears in the cases in different postures. By far the most common is the result of the defendant's raising as a defense a state statute denying unlicensed foreign corporations doing business in the

state access to the courts to enforce contracts made in the state. In determining the validity of this defense, the court is often obliged to determine whether the unlicensed foreign corporation was in fact doing business in the state within the statute. The question arises in other forms and contexts, but rarely does it arise as the result of the state's bringing an action to require the corporation to qualify. These decisions are of great assistance in deciding the question of qualification, but to be of any real help they must be qualification cases and not decisions evaluating the activities of the corporation for the purpose of deciding whether it is subject to service of process or taxation.

Equally important in determining whether or not qualification is necessary is the state qualification statute itself. In addition to determining whether the activities of the corporation have taken from it the protection afforded interstate commerce, it is necesary to examine the language of the pertinent statute and to decide whether it is applicable by its terms. Many states have enacted statutes spelling out some of the activities which will or will not require qualification. These "definitions" of what constitutes doing business usually take the form of a list of specific activities which alone or together will not require qualification. The "definition" contained in the Model Business Corporation Act prepared by the Committee on Corporate Laws of the American Bar Association, which has been adopted in full by Alaska, Hawaii, Iowa, North Dakota and Oregon, reads as follows:

"Without excluding other activities which may not constitute transacting business in this State, a foreign corporation shall not be considered to be transacting business in this State, for the purposes of this Act, by reason of carrying on in this State any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(b) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

(c) Maintaining bank accounts.

(d) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(e) Effecting sales through independent contractors.

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts.

(g) Creating evidences of debt, mortgages or liens on real or personal property.

(h) Securing or collecting debts or enforcing any rights in property securing the same.

(i) Transacting any business in interstate commerce.

(j) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature."

Connecticut has adopted the Model Act definition with the exception of subsection (e).

Twenty-five other states* and the District of Columbia, as well as ten

* Alabama, California, Delaware, Florida, Idaho, Kansas, Maryland, Massachusetts, Montana, Nevada, New Jersey, New York (effective April 1, 1963), North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah (effective January 1, 1962), Vermont, Washington, West Virginia, Wisconsin.

provinces and one territory of Canada, Puerto Rico and the Virgin Islands, have some statutory definition of what does or does not constitute doing business for the purposes of qualification. These definitions range from those which are substantially similar to the Model Act to provisions providing little more than that corporations engaged in interstate commerce shall be exempt from qualification.

Additional material on this subject is contained in C T's *What Constitutes Doing Business*, including discussions on various activities which have been held to require or not to require qualification, statutory "definitions" of doing business, and leading cases in the service of process field. In addition, the definitions appearing in the laws of each jurisdiction are included in the Corporation Law Features which are available to attorneys at the nearest C T Office.

domestic corporations

DELAWARE

Proposed merger would not be enjoined in the absence of fraud or unfairness sufficient to shock the conscience of the court.

Plaintiffs, who together owned or were beneficially interested in 5% of the issued and outstanding common stock of one of defendants, brought this action to enjoin the merger of the defendant corporations. The complaint alleged, among other things, that the exchange ratio of 2¼ shares of the stock of one of defendants for one share of the other was so grossly unfair as to constitute a constructive fraud on minority stockholders.

The Court of Chancery of Delaware, New Castle, observed, however, that "plaintiffs in attacking the proposed merger do not adequately allege fraud as such but rather quarrel in legal language at the passing of an old order or way of business." Concluding that lucid financial reports upon which the exchange ratio was premised clearly sustained its propriety, the court observed that the complaining stockholders "have no alternative but to ask for their appraisal rights. I say this because absent fraud or a showing that the terms of a proposed merger are so unfair as to shock the conscience of the court it is the policy of the courts of Delaware to permit contracting corporations to take advantage of statutory devices for corporate consolidation furnished by legislative act." "The reasons for a merger or the business necessity behind it are not matters for judicial determination." The injunction was denied.

Bruce v. E. L. Bruce Company, 174 A.2d 29. Alexander L. Nichols of Morris, Nichols, Arsht & Tunnell, of Wilmington, and Macliesh, Spray, Price & Underwood, of Chicago, Ill., for plaintiffs. Arthur G. Logan of Logan, Marvel & Boggs and Aubrey B. Lank, of Theisen & Lank, of Wilmington, for intervening plaintiffs. James T. McKinstry, of Richards, Layton & Finger, of Wilmington, and Robert N. West of Shearman & Sterling, of New York City, for defendant E. L. Bruce Co.

DISTRICT OF COLUMBIA

Transfer of corporation's American League franchise to a new league city did not constitute "disposition" of franchise, and therefore such transfer, together with disposition of other assets, did not constitute disposition of substantially all of assets outside regular course of business.

Plaintiff, the owner of forty percent of the outstanding stock of the Washington American League Base Ball Club, Inc., a District of Columbia corporation, brought this suit seeking injunctive relief against the corporation and its directors on the ground that the directors had agreed to dispose of substantially all of the corporation's assets outside of the usual and regular course of its business without the approval of the holders of two thirds of its outstanding stock, in violation of § 29-929 D.C.Code. The complaint alleged that the directors planned to dispose of the corporation's exclusive right to represent Washington in Major League Baseball, its interest in certain minor league properties, and real estate located in the District of Columbia.

The United States Court of Appeals, District of Columbia Circuit, affirming judgment for defendants, observed that the alleged abandonment of the exclusive right to represent Washington in Major League Baseball was based upon a proposed transfer of the corporation's American League franchise to a new league city. The Court concluded that rather than a "disposition" of the franchise, after the transfer the corporation would retain "its franchise, membership in the American League, and the bundle of rights and privileges which flow therefrom. Only the location at which the corporation's club plays its 'home' games would be changed. Although such a change may affect the feelings of many baseball fans, it does not effect a disposition of the franchise within the meaning of § 29-929."

Murphy v. Washington American League Base Ball Club, 293 F.2d 522. Daniel M. Gribbon (Joel Barlow, John B. Jones, Jr. and Charles D. Hawley, on the brief), of Washington, for appellant. John E. Powell (Arthur P. Drury, John M. Lynham and Henry H. Paige, on the brief), of Washington, for appellees.

MINNESOTA

Order granting stockholder right to inspect corporate books and records in preparation for trial of an action brought by stockholder for allegedly wrongful denial of right to inspect books and records held non-appealable.

This action was brought by plaintiff stockholder seeking damages for allegedly wrongful denial of the right to examine the books and records of the corporation. After commencement of the action, plaintiff moved the trial court for leave to examine the books and records of the corporation in order to prepare for trial. The trial court granted the motion, the defendant corporation appealed from the order granting plaintiff's motion, and plaintiff moved to dismiss the appeal on the ground that the order was not appealable. Under Minnesota statutes, an appeal may be taken from an order granting "a provisional remedy," and from an order

"involving the merits of the action or some part thereof."

The Supreme Court of Minnesota, concluding that the order was interlocutory and nonappealable, observed that the right of inspection granted was only preliminary to the trial. "Aside from the fact that a stockholder is ordinarily entitled to examine the books and records of a corporation in which he holds stock, it was within the discretionary powers of the trial court here to grant an inspection for discovery purposes in preparing for trial." The appeal was dismissed.

Skutt v. Minneapolis Basketball Corp., 110 N.W.2d 495. Ryan, Kain, Mangan, Westphal & Kressel, James J. Moran, of Minneapolis, for appellant. Robins, Davis & Lyons, Harding A. Orren and Lawrence Zelle, of Minneapolis, for respondent.

NEW YORK

Director of qualified Delaware corporation which maintained records and transacted business in New York granted right to inspect stockbook and injunction staying stockholders' meeting to be held in Arizona.

Petitioner sought an order for inspection of the stockbook of respondent corporation, and a stay of the stockholders' meeting until 20 days after such inspection had been completed. Petitioner was a director of respondent, a Delaware corporation qualified to do business in New York. In addition, petitioner claimed to be a beneficial owner of stock of respondent. Petitioner had been denied access to the stockbook, presumably on the ground that he was not a stockholder of record and that inspection was sought unrelated to the performance of his duties as a director.

The New York Supreme Court, Special Term, New York County, Part I, observed that a director has an absolute, unqualified right to inspect books and records. In addition, "where the right to inspection otherwise exists, the fact that it is sought for the apparent purpose of ousting the present management is not of itself considered to be an act of bad faith detrimental to corporate interests." In answer to respondent's contention that the court should not assume jurisdiction in the management of the internal affairs of a foreign corporation, the court observed that the principles behind this rule "lose their efficacy where, as in the matter at bar, the corporation is foreign in a technical sense only. . . . Thus, where records are kept in this jurisdiction, and business is transacted here, reason and expediency should prevail and relief should be afforded if warranted." As to the petitioner's request for a stay of the pending stockholders' meeting until 20 days after completion of the inspection, the Court concluded that the fact that "the meeting is not scheduled to take place in this jurisdiction, or even in the corporation's domicilary jurisdiction, but in Prescott, Arizona, is not persuasive to defeat the relief sought. Where jurisdiction of the parties is assumed, this court may render an injunctive decree having extra-territorial effect in appropriate circumstances." The petition was accordingly granted in all respects.

Gresov v. Shattuck Denn Mining Corp., 215 N.Y.S.2d 98. (Discussed in CCH CORPORATION LAW GUIDE ¶ 9555C.) Gallop Climenko & Gould (Milton S. Gould and Joseph H. Einstein, of counsel), of New York City, for petitioner. Cahill, Gordon, Reindel & Ohl, of New York City, for respondent Shattuck Denn Mining Corp.

foreign corporations

COLORADO

Statute of limitations held not tolled and continued to run where defendant unlicensed foreign corporation was present in state for purpose of service of process during running of statute.

Plaintiff brought this action to recover money allegedly due him as commissions on sales made in 1952. The complaint was filed more than six years after the cause of action accrued. To defendant's answer that the action was barred by the six-year statute of limitations, plaintiff replied that defendant was an unlicensed foreign corporation, absent from the state for the ensuing seven years, and that defendant's absence tolled the statute.

The Supreme Court of Colorado concluded that defendant was present in the state for the purpose of service of process and that therefore the statute of limitations was not tolled and the action was barred by the statute. The Court based its conclusion that defendant had been present for the purpose of service of process on the fact that it had been selling skiing equipment in Colorado through local salesmen continuously since 1937; that sales were made through salesmen who carried samples and a catalog of defendant's merchandise; that orders were given to the salesmen for transmission to the company; that the salesmen expedited the delivery of the goods and could choose the method of transportation; that the salesmen assisted in the collection of delinquent accounts, solicited new accounts and checked on credit ratings; and that the saelsmen could pick up over-ordered merchandise from one customer and sell it to another. In addition, since 1952, defendant's gross sales in Colorado were in excess of $38,000. The judgment dismissing the action on the ground, among others, that it was barred by the statute of limitations, was affirmed.

Norton v. Dartmouth Skis, Inc., 364 P.2d 866. (Discussed in CCH CORPORATION LAW GUIDE ¶ 9688.) John T. Dugan, of Denver, for plaintiff in error. Holme, Roberts, More & Owen, of Denver, for defendant in error.

NEW YORK

Unlicensed foreign corporation barred from maintaining action to enforce mechanic's lien where contract involved was made in state while corporation was doing business without certificate of authority.

Plaintiff unlicensed foreign corporation brought this action to foreclose a mechanic's lien filed against certain real property owned by defendant in New York. Defendant pleaded, among other defenses, that Sections 210 and 218 of the General Corporation Law prohibit a foreign corporation doing business in New York from maintaining an action on any contract made by it in that state unless before the making of such contract the foreign corporation had obtained a certificate of authority to do business from the Secretary of State. Plaintiff was engaged in general construction work in the state, erecting homes, remodeling interiors, doing jobbing work, refurbishing swimming pools and doing related work. Its employees, twenty in number, were domiciliaries of Massachusetts, and motored daily in and out of New York. Plaintiff maintained a telephone listing in Columbia

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important city taxes, withholding taxes, unemployment taxes, current state tax requirements, etc.] ... It is one of the best helps for lawyers I have ever seen ... Knowing how time-consuming it would be for me to collect all the information you laid on my desk, I would say this one feature of C T service is worth the cost of the entire service."

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County and erected signs at the site of its various New York operations indicating that it was the contractor engaged in the work at the site. It transported material to the locale of its New York enterprises, and its machinery and equipment remained there until its contracts were discharged. It maintained no office, bank accounts, records or salesmen in New York, and its directors, officers and employees all resided in and were paid in Massachusetts.

The New York Columbia County Court was of the opinion that plaintiff's activities over a two and one-half year period prior to the transaction in question constituted doing business in New York. Plaintiff's activities in New York "demonstrated 'some continuity of act and purpose' and appear definitely 'in furtherance of its normal business dealings.' In fact, its intrastate transactions are in pursuance of the very purposes for which it was incorporated in Massachusetts. . . . A series of extensive and persistent transactions involving various phases of construction work with men and machines in this state over varying periods of time signify an intent to establish a permanent business in this state. Clearly, under such circumstances, if plaintiff can be immune from the dictates of the statute, then the statute becomes meaningless." Concluding as well, that the contract involved in the action was made in New York, the Court held that plaintiff was barred from bringing this action to foreclose its mechanic's lien, and the complaint was dismissed.

Berkshire Engineering Corp. v. Scott-Paine, 217 N.Y.S.2d 919. John N. McLaren, of Hudson, for plaintiff. Walter W. Davis, of Millerton, for defendant.

Unlicensed foreign corporation, the activities of which in the state consisted solely of solicitation, nevertheless held subject to service of process where the solicitation was carried on extensively and consistently over a long period of time.

This was a diversity action for personal injuries sustained by the infant plaintiff in Georgia. Defendant railroad company moved to dismiss the complaint and quash the service on the grounds, among others, that it did no business in New York and was not subject to service of process there, and that the witnesses of defendant were in Georgia where the injury occurred and therefore this court was a forum non conveniens.

The United States District Court, E. D., New York, concluding that the District Court of Georgia would be as inconvenient to the plaintiff as this court was alleged to be to defendant, turned its attention to defendant's contention that it was not doing business in New York so as to be subject to service of process there. The court cited authorities to the effect that although solicitation of business alone is not enough to constitute presence in a state for service of process, nevertheless comparatively little more is required. The court found that "little more" in the continuity of defendant's solicitation for more than 20 years, the establishment of an office, and the holding out by defendant of the person served as its general eastern agent. "The Court finds that though solicitation was the sole business activity carried on by the defendant corporation within the jurisdiction of this Court, it was carried on extensively, consistently and over a period of many years." The Court concluded that defendant was present within the jurisdiction and subject to the Court's process.

Edwards v. Atlanta and West Point Railroad Company, 197 F.Supp. 686. Ralph Yachnin, of Corona, N. Y., for plaintiff. No appearance filed for defendant.

PENNSYLVANIA

Unlicensed foreign corporation held not subject to suit in state where activities of its agents were not regular and continuous.

Defendant unqualified foreign corporation had its principal place of business in Connecticut. Its business consisted of marketing certain "grab" devices used in industry to transport heavy objects, such as large rolls of paper. Defendant had no office, property, bank accounts or employees in Pennsylvania. Defendant earned approximately $20,000 in Pennsylvania per year by means of the sale of the "grabs" to various industries located in the state. This business was obtained by approximately twelve to fifteen commission representatives in Pennsylvania who visited industrial establishments for the purpose of estimating their need for the products of the companies represented. Each commission representative represented several competing companies, and their operations were not under the control of defendant.

In addition to the activity of these commission representatives, occasionally, and with no degree of regularity, an employee of defendant would come to Pennsylvania to remedy a complaint of one of its customers. Sometimes one of defendant's agents traveled directly to a customer to estimate the cost and requirements of equipment. The assistant sales manager of defendant was present at a trade convention in Pittsburgh, but none of the products of defendant were displayed there.

The United States District Court, E. D. Pennsylvania, concluded that defendant was not subject to suit in Pennsylvania under the statute providing for service on an unlicensed foreign corporation doing business in the state by service on the Secretary of State. The court pointed out that the commission representatives were not agents of defendant, and that therefore defendant was not doing business in the state by virtue of the activities of these commission representatives. In addition, the court concluded that "the isolated activities of the defendant's agents within this State are not sufficiently regular and continuous to constitute 'doing business' within the meaning of the statute."

Mays v. Mansaver Industries, Inc., CCH PENNSYLVANIA TAX REPORTS ¶200-195, 196 F.Supp. 467. Dorfman, Pechner, Sacks, & Dorfman, by Harry Lore, of Philadelphia, for plaintiff. John J. McDevitt, 3rd, of Philadelphia, for Mansaver Industries, Inc.

taxation

WISCONSIN

Interstate trucking operations of unlicensed foreign corporation operating exclusively in interstate commerce held to constitute sufficient nexus with state to sustain imposition of net income tax.

This was an action by taxpayer, an unlicensed foreign corporation, against the Wisconsin Department of Taxation for the abatement of income taxes for the years 1948 to 1953, inclusive. Taxpayer was engaged in a trucking business exclu-

sively in interstate commerce. It delivered freight to points in Wisconsin from outside the state, and occasionally picked up freight in Wisconsin to be delivered outside the state. No freight was both picked up and delivered in Wisconsin. Its trucking operations into, out of, and through Wisconsin during the years in question were regular and continuous. Taxpayer's truck drivers were its only employees performing services in the state, and its trucks were its only property in the state. It maintained no office or terminal facilities and paid no wages in Wisconsin, and no contracts, orders or solicitations for the transportation of property were made or accepted in the state. No payment for services was received in the state. Approximately three-fourths of the total miles traveled by taxpayer's trucks were traveled in Wisconsin, of which over half represented shipments passing through the state but neither originating or terminating there.

The Supreme Court of Wisconsin set forth the issues as: (1) Were the operations of the taxpayer in Wiscsonsin such as to subject it to taxation on its net income apportioned to Wisconsin under the Wisconsin statutes? (2) Does the imposition of such net income tax violate the commerce clause of the United States Constitution? and (3) Is there sufficient nexus between the state of Wisconsin and taxpayer's business activities in the state?

The Court considered first taxpayer's contention that the pertinent Wisconsin tax statute had no application to it since it derived no income from "business transacted within the state." The taxpayer's regular business was the interstate transportation of property, and this was precisely what it did in Wisconsin. Therefore, the Court concluded, the taxpayer did transact business in Wisconsin under the statute. The question of whether the imposition of the tax in question violated the commerce clause of the United States constitution the Court answered in the negative, concluding that the question was controlled by the United States Supreme Court decision in *Northwestern States Portland Cement Co. v. Minnesota*, 1959, 358 U. S. 450, 79 S. Ct. 357: "We conclude that net income from the interstate operations of a foreign corporation may be subjected to state taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming sufficient nexus to support the same."

Finally the Wisconsin Supreme Court, affirming the judgment below adverse to the taxpayer, concluded that the taxpayer's interstate trucking activities in Wisconsin constituted sufficient nexus with the state to justify the imposition of the tax without violation of the due process clause of the United States Constitution. The Court pointed out that in those decisions where the United States Supreme Court emphasized the local activities of the taxpayer such as permanent employees or an office in the taxing state which it felt constituted the sufficient nexus, the taxpayer shipped its goods by common carrier. In the instant case the taxpayer's business was the interstate transportation of property, and this activity alone, without any additional localized activities, therefore constituted a sufficient nexus to support the imposition of the tax.

Moore Motor Freight Lines, Inc. v. Wisconsin, CCH WISCONSIN TAX REPORTS ¶ 200-033, 111 N.W.2d 148. (Discussed in CCH CORPORATION LAW GUIDE ¶ 9688.) Doar & Knowles, of New Richmond, for appellant. John W. Reynolds, Atty. Gen., Harold H. Persons, Asst. Atty. Gen., for respondent.

state legislation

Alabama — Act 81, 1st Special Session of 1961, effective January 1, 1962, has changed the due date for the franchise tax from April 1 to March 15.

Acts 49 and 50, 1st Special Session of 1961, effective January 1, 1962, have changed the due date for filing the annual application for permit by both domestic and foreign corporations from February 1 to March 15.

Connecticut — As a result of the enactment of Public Act 604, Laws of 1961, the corporation business tax rate is increased from 3¼% to 5% for income years beginning in 1961 or thereafter. This Act also increases the minimum tax to the greater of 2.5 mills per dollar of invested capital or $25.

Cases of Interest

De Claire Mink Ranches v. Federal Foods, Inc., Iowa, 192 F.Supp. 148 (Truck driver not general agent for service)

Frank v. Getty, 216 N.Y.S.2d 15 (Control by group of stockholders not wrong in itself)

Kenmore-Louis Theatre, Inc. v. Sack, Mass., 192 F.Supp. 711 (Place of signing contract not controlling as to "doing business")

Zirin v. Charles Pfizer & Co., Fla., 128 So.2d 594 (Service sustained where action arose out of activities in state)

Young v. Columbia Broadcasting System, Inc., 215 N.Y.S.2d 950 (Inspection denied where application not made in good faith)

Lenhart Altschuler Associates, Inc. v. Benjamin, 215 N.Y.S.2d 541 (Stock transfer agent owes no affirmative duty to a stockholder)

Switz v. Kingsley, N. J., 173 A.2d 449 (Lower assessment for farm machinery and livestock invalid)

Ackert v. Ausman, 218 N.Y.S.2d 822 (Service sustained where corporation did business through independent contractor)

Fiat Motor Company v. Alabama Imported Cars, Inc., D. C., 292 F.2d 745 (Importer subject to suit at principal place of business of its distributor)

Brandon v. Memphis Publishing Company, Ark., 194 F.Supp. 376 (Circulating newspaper and maintaining office sufficient to sustain service)

Lawson v. Pan American World Airways, Inc., 216 N.Y.S.2d 549 (Solicitation "plus" sufficient to sustain service)

Scandinavian Airlines System, Inc. v. County of Los Angeles, Calif., 363 P.2d 25 (Vessels engaged in foreign commerce taxable at home port only)

Empire Steel Corp. of Texas, Inc. v. Superior Court, 13 Cal. Rptr. 854 (Ownership of subsidiary insufficient to sustain service)

Mays v. Oxford Paper Company, Penn., 195 F.Supp. 414 (Solicitation and promotion of business sufficient to sustain service)

Paulos v. Best Securities, Inc., Minn., 109 N.W.2d 576 (Service on Commissioner of Securities sustained)

Avoiding Reports and Taxes

The timing of organization, qualification, dissolution or withdrawal can be of vital importance in connection with the necessity of filing and paying various reports and taxes. Delaying organization or qualification until after January 1, or completing dissolution or withdrawal before January 1, may enable a corporation to postpone for a year or more or avoid altogether the filing and payment of certain reports and taxes.

Careful consideration should be given to delaying organization or qualification or accelerating dissolution or withdrawal so as to take advantage of these possibilities, particularly toward the end of the year. The various reports and taxes which can be avoided may be obtained from the nearest C T office.

Current Books and Articles

Handbook of the Law of Corporations and Other Business Enterprises, by Harry G. Henn, Professor of Law, The Cornell Law School. Published by West Publishing Company, 1961, 735 pages.

Our Future Industrial Society: A Global Vision, by Solomon B. Levine. 14 Industrial and Labor Relations Review, July, 1961, page 548.

The Corporation and the State in Anglo-American Law and Politics, by Paul P. Harbrecht, S. J., and Joseph A. McCallin, S. J. 10 Journal of Public Law, Spring, 1961, page 1.

Nonvoting Shares—in Missouri, by William H. Pittman. 26 Missouri Law Review, April, 1961, page 117.

Arrangements Which Protect Minority Shareholders Against "Squeeze-Outs", by F. Hodge O'Neal. 45 Minnesota Law Review, March, 1961, page 537.

Developments in Corporate Law, by Eugene J. Conroy. 16 Business Lawyer, July, 1961, page 799.

Corporate Law Departments Adjust to Corporate Decentralization, by Joseph R. Creighton. 16 Business Lawyer, July, 1961, page 1004.

Management Service Function, The, by Robert M. Trueblood. 112 Journal of Accountancy, July, 1961, page 37.

Stock Options Are in the Public Interest, by Henry Ford, II. 39 Harvard Business Review, July—August, 1961, page 45.

Stock Options Should Be Valued, by Edwin D. Campbell. 39 Harvard Business Review, July—August, 1961, page 52.

Code of Conduct for Executives, by Robert W. Austin. 39 Harvard Business Review, September—October, 1961, page 53.

Businessmen in Power, by Benjamin M. Selekman. 39 Harvard Business Review, September—October, 1961, page 95.

Coming Era in Engineering Management, by Clinton J. Chamberlain. 39 Harvard Business Review, September—October, 1961, page 87.

Global Plan for Salary Administration, by Kenneth E. Foster, Gerald F. Wajda, and Theodore R. Lawson. 39 Harvard Business Review, September—October, 1961, page 62.

Help from the Company Economist, by Henry B. Arthur. 39 Harvard Business Review, September—October, 1961, page 80.

regulations and rulings

Arkansas — Property purchased from an exempt organization in July of 1961 by a non-exempt organization is subject to assessment and taxation for the year 1962. Thus, the property is to be assessed according to its value as of January 1, 1962. (Opinion of the Attorney General, CCH ARKANSAS TAX REPORTS ¶ 24-030)

Louisiana — Sec. 2611 of Title 47 of the Louisiana Statutes, which sets out the qualification fee for foreign corporations doing business in the state, imposes the fee on the amount of "capital stock of the corporation employed by it in the State." This phrase must be construed to mean the capital or capital assets of the corporation employed by it in the state. The measure of the amount of capital stock employed in the state is a portion of the total authorized capital stock, not the issued capital stock. (Opinion of the Attorney General, CCH LOUISIANA TAX REPORTS ¶ 200-196)

The person or corporation who owns property on assessment day is liable for the tax on such property for that year. Thus, if automobiles are physically located in the showrooms or lots of dealers on assessment day, the dealers are not liable for the property tax on the automobiles unless they actually own them. (Opinion of the Attorney General, CCH LOUISIANA TAX REPORTS ¶ 200-198)

Minnesota — Real property used by a non-profit corporation for production of income is not exempt from property taxes. The leased property is subject to taxation since it was not used directly for the purpose for which the non-profit corporation was organized. "It is the direct and immediate use of the property, and not the use of the income therefrom, that is determinative of whether the property is used for tax-exempt purposes." (Opinion of the Attorney General, CCH MINNESOTA TAX REPORTS ¶ 200-185)

It is mandatory for the County Treasurer to mail tax statements for personal property tax. The County Board has no direction over this matter as it has for publishing the county tax list. (Opinion of the Attorney General, CCH MINNESOTA TAX REPORTS ¶ 200-188)

New Mexico — Liability for the payment of properly and validly assessed taxes attaches as of January 1 of each year, and that liability continues under the same assessment for the duration of the tax year, even if the property is damaged or destroyed during the tax year.

A county assessor may not subject real property, the title to which has passed to a municipality, with further liability for the payment of taxes. The property is cleared of any liability for previously assessed taxes once it is acquired by the municipality. However, the person in whose name the property was assessed on January 1 of the year in which the property was subsequently transferred to a municipality is personally responsible for payment of the taxes for the entire year, regardless of when the property was transferred. (Opinion of the Attorney General, CCH NEW MEXICO TAX REPORTS ¶ 200-219)

some important matters

For December and January

This Calendar does not purport to be a *complete* list of all matters requiring attention by corporations in any given jurisdiction. It is a list of the more important requirements covered by the *Report and Tax Bulletins* of The Corporation Trust Company. Attorneys desiring timely and comprehensive information regarding requirements in any of the states, Canadian Provinces, or other jurisdictions served by C T, including information with respect to forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Quarterly Withholding Tax due on or before January 31.

Report of resident stockholders and bondholders due on or before February 1.

Alaska — Annual Corporation Tax due on or before January 1.

Business License Tax due on or before January 31.

Annual Report due between January 1 and March 1.

Quarterly Withholding Tax due on or before January 31.

Alberta — Annual Return due during the month of January.—Domestic Corporations.

Arizona — Quarterly Withholding Tax due on or before January 31.

California — Quarterly Retail Sales Tax due on or before January 31.

Canal Zone — Annual License Tax due January 1.—Foreign Corporations.

Colorado — Quarterly Withholding Tax due on or before January 31.

License Tax on stores due on or before January 1.

Retail Sales Tax License renewed on or before January 1.

Annual Report and Annual Franchise Tax due between January 1 and May 1.

Connecticut — Quarterly Retail Sales Tax due on or before January 31.

Delaware — Annual Report due on or before first Tuesday in January.—Domestic Corporations.

Withholding at Source Returns due January 31.—Corporations paying compensation to Delaware employees.

District of Columbia — Annual Report published and filed between January 1 and January 20.—Domestic Corporations formed prior to December 6, 1954.

Application for license in connection with District Franchise (Income) Tax due before January 1.

Quarterly Withholding Returns due on or before January 31.

Georgia — Annual License Tax Report of Foreign Corporations due on or before January 1, delinquent April 15.
Quarterly Withholding Returns due on or before January 31.

Guam — Business License due on or before December 31.

Hawaii — Gross Income, Consumption and Compensation Tax Licenses renewable on or before January 31.

Idaho — Quarterly Withholding Tax Returns due on or before January 31.

Indiana — Information and Quarterly Withholding Returns due on or before January 31.
Gross Income Tax Return due on or before January 31.
License Tax on stores due on or before February 1.

Iowa — Quarterly Retail Sales Tax due on or before January 31.
Statement of Capital Stock due on January 25.—Domestic Corporations.

Kentucky — Quarterly Withholding Tax due on or before January 31.

Louisiana — Annual Report due February 1.—Domestic Corporations.
License Tax on Stores report due on or before February 1.
Occupation License Tax due between January 1 and March 1.
Quarterly Withholding Tax due on or before January 31.

Maryland — Returns of Information at the Source and Quarterly Withholding Tax due on or before January 31.

Massachusetts — Quarterly Withholding Tax due on or before January 31.

Minnesota — Quarterly Withholding Tax due on or before January 31.
Annual Report due between January 1 and April 1.—Foreign Corporations.

Missouri — Annual Franchise Tax due on or before December 31.
Quarterly Retail Sales Tax due on or before January 15.
Withholding at Source Returns due on or before January 31.

Montana — Withholding at Source Returns due on or before January 31.
License Tax on stores due on or before January 31.

Nevada — Quarterly Retail Sales Tax due on or before January 31.

New Hampshire — Annual Maintenance Fee due on first business day of January.—Foreign Corporations.

New Jersey — Quarterly Withholding Tax (from New York residents) due on or before January 31.

New Mexico — Quarterly Withholding Tax due on or before January 31.

New York — Withholding at Source Returns and Tax due on or before January 31.

North Carolina — Quarterly Withholding Tax due on or before January 31.

North Dakota — Quarterly Retail Sales Tax due on or before January 31.

Nova Scotia — Annual Statement and Registration fee due during month of January.

Ohio — List of resident shareholders due on or before January 15.
Report to Department of Industrial Relations due on or before January 20.
Sales and Use Tax due semiannually on or before January 31.

Oklahoma — Quarterly Withholding Tax due on or before January 31.

Oregon — Quarterly Withholding Tax due on or before January 31.

Pennsylvania — Report of Unclaimed Dividends due during the month of January.—Domestic Corporations.
Quarterly Selective Sales and Use Tax due on or before January 31.

Rhode Island — Annual Report due during the month of February.

Saskatchewan — Renewal and Registration of Licenses due on or before January 1.
Quarterly Sales Tax due on or before January 20.

South Carolina — Annual Statement due January 31.—Foreign Corporations.
Occupation License Tax due on or before January 1.
Quarterly Withholding Tax due on or before January 31.

South Dakota — Quarterly Retail Sales Tax due on or before January 15.
Annual Report due on or before January 20.—Domestic Corporations.

Tennessee — Occupation License Tax due on or before January 1.

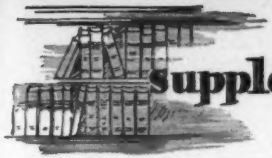
Texas — License Tax on stores due on or before December 31.
Quarterly Limited Sales, Excise and Use Tax due on or before January 31.

Utah — Quarterly Retail Sales Tax due on or before January 31.
Returns of Information at the Source and Quarterly Withholding Returns due on or before January 31.

Vermont — Quarterly Withholding Tax due on or before January 31.

Virginia — Occupation License Tax and Merchants License Tax due on or before January 1.

West Virginia — Annual Business (Gross Sales) Tax due January 31.
Quarterly Withholding Tax and Return of Information at the Source due on or before January 31.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Heads I Win, Tails You Lose. An explanation of the possible consequences to the corporation which takes a chance [?] on doing business in states outside the state of its incorporation without complying with governing laws, rulings and regulations.

Spot Stocks Mean More Sales. A review of the advantages *and* dangers of using spot stocks at strategic shipping centers to bolster and increase sales.

Agent for Process. Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

Corporate Confusion. A discussion of the wriggling, twisting, seemingly opposite court decisions which make building a pattern for out-of-state operations by a corporation a risky business these days.

A Pretty Penny . . . Gone! What it can cost a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

FOR LAWYERS ONLY

The following C T publications are available only to members of the Bar.

What Constitutes Doing Business. A 133-page book containing texts of statutory definitions of "doing business" by a corporation . . . all-state discussions, with citations, of 49 "doing business" subjects . . . citations to service of process cases (as distinguished from cases relating to qualification), listed according to subject and classified according to whether service was sustained or set aside.

Suppose The Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life — and some measures to avoid them that a lawyer may help his client to take.

Form 3547 requested

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